As regards sentence, the learned President stated as follows in his grounds of decisions:—

"During the course of the hearing it transpired that the working conditions in the Mine — particularly in respect of the maintenance of the road, speed-limit, and vehicles — were most unsatisfactory. There were about 120 workers and yet only 4 vehicles — two 5 tonner trucks and two landrovers — were provided to transport the workers. They all had to scramble on these four vehicles to or from work, as the distance from the village to the Mines is about seven miles. There was evidence that the drivers were not properly instructed regarding the speed limit on that road; and that no proper checking or facility was given to the vehicles so as they would be safe to carry passengers. The dangerous points on the road were not marked. The vehicle in question was habitually carrying about as many as 40 people, and yet nothing was done to it to ensure safety. It had no seat, hand railings, or even tail boards. It was staggering to think that such a condition was allowed in the Mines of this country. I agreed with the defence counsel that but for these factors the death toll might not have been so high."

With very great respect to the learned President these factors as set out in his grounds of decision, which he regarded as mitigating circumstances, to my mind were no mitigating circumstances at all. On the contrary, they were factors which he should have taken into consideration in deciding whether this was not a proper case for imposing a term of imprisonment. From what he has said it is abundantly clear that it was extremely dangerous for the respondent to have made any attempt to overtake the truck in front of him, especially when he was carrying 41 passengers. Having found the respondent guilty of the degree of rashness as described by him, to my mind it was incumbent upon him to impose a term of imprisonment. As Spenser-Wilkinson J. said in the case of *R.* v. *R.W. Downey*, [1] once this degree of rashness is proved "there cannot be many cases in which a sentence of fine would be adequate punishment."

In view of all the circumstances of this case I quash the sentence of fine imposed by the learned President and substitute in its place a sentence of 6 months' imprisonment. There will be no alteration as to the order of disqualification. The fine, if paid by the respondent, should be refunded.

Sentence of fine quashed; sentence of imprisonment substituted.

Solicitors: *Sault, Keith Sellar & Co.*

BANK NEGARA INDONESIA v. KIE HOCK SHIPPING CO. LTD.; BANK OF CHINA & ORS. 3rd Party; HONG LIAN TRADING CO. LTD. 4th Party

[O.C.J. (Tan Ah Tah J.) January 14, 1963]

[Singapore — Suit No. 1113 of 1960]

Bills of Lading — Acknowledgment of quantity, quality and value of goods — Goods delivered to person without production of bills of lading — Bills of lading transferred to plaintiffs as pledgees after wrongful delivery — Conversion.

On October 14 and 15, 1959, the defendants issued two bills of lading in which they acknowledged that goods were shipped by an Indonesian company and were to be conveyed to and delivered at the port of London with transshipment at Singapore unto the order of the plaintiffs. The defendants delivered the goods in question to the 4th party company without requiring that company to produce the relevant bills of lading on October 20, 1959. On November 18, 1959 the plaintiffs received the bills of lading as pledgees from their agents in London. The plaintiffs claimed against the defendants damages for conversion. The defendants joined the 3rd party which joined the 4th party claiming indemnities respectively.

Held: (1) the plaintiffs' right of action was not affected by the fact that at the date of the wrongful delivery the bills of lading had not been transferred to the plaintiffs;

(2) the plaintiffs, as pledgees, were entitled to succeed in conversion.

Cases referred to:—

(1) *Sze Hai Tong Bank Ltd.* v. *Rambler Cycle Co. Ltd.* [1959] M.L.J. 200.

(2) *Marquess of Bute* v. *Barclays Bank Ltd.* [1954] 3 W.L.R. 741.

(3) *Bristol and West of England Bank* v. *Midland Railway Co.* [1891] 2 Q.B. 653.

ACTION.

C. C. Tan for the plaintiffs.

M. B. Brash for the defendants.

C. H. Smith for the Bank of China.

Cur. Adv. Vult.

Tan Ah Tah J.: The plaintiffs' claim against the defendants in this action is for damages for breach of contract contained in 11 bills of lading by which the defendants acknowledged that certain goods were shipped on board the defendants' vessels for carriage to and delivery unto order or the order of the plaintiffs at London, England with transhipment in Singapore, and alternatively damages for conversion of the said goods by the defendants.

The defendants have joined the Bank of China, Tan Kah Keng and Hong Lian Trading Co. Ltd. as third parties, claiming that the third parties are liable to indemnify them under the terms of certain letters of indemnity and guarantee. In its turn the Bank of China has joined the Hong Lian Trading Co. Ltd. as a fourth party, claiming that the fourth party is liable to indemnify the Bank of China under the terms of a letter of indemnity.

The defendants' claim against the Bank of China is made in relation to the value of the goods specified in only two of the 11 bills of lading. The Bank of China is desirous of defending the plaintiffs' claim against the defendants in respect of these goods and the attitude adopted by counsel for the defendants is not to stand in the way of the Bank of China in making such defence. As to the goods specified in the remaining nine bills of lading, the defendants have submitted to judgment and judgment has been entered for the plaintiffs against the defendants for the sum of $779,790.82 being the value thereof. In what follows I shall be dealing only with the question whether the defendants

are liable in damages to the plaintiffs in respect of the goods specified in the two bills of lading to which I have already referred.

By an order of court made on the 10th October, 1960 it was ordered that the Bank of China should be at liberty to appear at the trial of this action and take such part as the judge should direct and be bound by the result of the trial and it was further ordered, *inter alia*, that the Bank of China be at liberty if it so desired to defend against the plaintiffs' claim in the action and that such liberty to defend be restricted to such questions as the court might direct.

It is alleged by the defendants in their pleadings that in consideration of the defendants releasing for delivery to Hong Lian Trading Co. Ltd. the goods specified in the two bills of lading without production of the said bills of lading, the Bank of China and Hong Lian Trading Co. Ltd. on the 19th October, 1959 undertook and agreed to indemnify the defendants fully against all consequences and liabilities of any kind whatsoever directly or indirectly arising from or relating to the said delivery. The defendants have by their pleadings admitted that the goods specified in all the 11 bills of lading were delivered by them to Hong Lian Trading Co. Ltd.

Counsel for the Bank of China submitted that he was entitled to require the plaintiffs to prove two matters. His contention was that, in the first place, the quantity, quality and value of the goods in question must be proved, and secondly, that it must be proved that at the date when delivery of the goods was made to Hong Lian Trading Co. Ltd. the plaintiffs or someone else had an interest in the goods which entitled the plaintiffs to immediate possession thereof. As to the first of these matters, I have already referred to the fact that the defendants have admitted that the goods specified in all the 11 bills of lading were delivered by them to Hong Lian Trading Co. Ltd. Counsel for the Bank of China stated that he was not suggesting that there had been any collusion between the plaintiffs and the defendants. He explained that he did not apply for leave to deliver a defence to the plaintiffs' statement of claim in order to raise the questions of quantity, quality and value, as he was entitled to do, because he was relying on a denial contained in the defendants' pleadings that the plaintiffs have suffered loss and damage. In my view, this denial is the usual formal denial contained in a defence to a claim for damages, and it is not possible to read into it any averment disputing the quantity, quality or value of the goods. In point of fact, the defendants have nowhere in their pleadings disputed the correctness of the quantity, quality and value of the goods as stated in the plaintiffs' statement of claim. Having regard to all these considerations, I ruled that in putting forward a defence to the plaintiffs' claim, the Bank of China was restricted to the second matter mentioned by its counsel, that is to say, the contention based on the fact that at the date of delivery of the goods the plaintiffs were not entitled to immediate possession thereof.

The evidence shows that on the 7th September, 1959 Hong Lian Trading Co. Ltd. sent an application to the plaintiffs requesting them to open with their agents in London an irrevocable letter of credit to the extent of £127,160. After an exchange of cablegrams between the plaintiffs and the Midland Bank Ltd., who were their agents in London, the Midland Bank Ltd. opened a transferable credit restricted to the P.T. Juda Bhakti Corporation of Djakarta and valid in Djakarta. The goods in question were duly shipped on the defendants' vessels at Palembang and the defendants issued two bills of lading dated the 14th October, 1959 and 15th October, 1959 respectively in which they acknowledged that the goods were shipped by the P.T. Juda Bhakti Corporation, Djakarta and were to be conveyed to and delivered at the port of London with imperative transhipment at Singapore "unto order of Bank Negara Indonesia." On the 22nd October, 1959 the P.T. Juda Bhakti Corporation drew two bills of exchange under the letter of credit on the Midland Bank Ltd. for the amounts due and also made out two invoices for the goods in question. It is clear from the evidence that the two bills of exchange were discounted in Djakarta by a bank which then sent the documents to London to claim reimbursement. Reimbursement was eventually made by the Midland Bank Ltd. who then debited the plaintiffs' account with the amounts paid and sent all the relevant documents to the plaintiffs who received them on the 18th November, 1959. The bills of lading were duly indorsed in blank by the plaintiffs.

It should be stated at this stage that the defendants delivered the goods in question to Hong Lian Trading Co. Ltd. on the 19th or 20th October, 1959 without requiring that company to produce the relevant bills of lading. The evidence shows that Hong Lian Trading Co. Ltd. were not entitled to receive the goods. In the circumstances the defendants were clearly guilty of conversion of the goods. If authority is required for this proposition it may be found in *Sze Hai Tong Bank Ltd.* v. *Rambler Cycle Co. Ltd.* (1)

In my opinion, the transfer of the bills of lading by the Midland Bank Ltd. to the plaintiffs had the effect of making the plaintiffs the pledgees of the goods in question. Counsel for the Bank of China pointed out that the bills of lading were received by the plaintiffs after the goods had been delivered to Hong Lian Trading Co. Ltd. He submitted that the plaintiffs must prove that at the time of the delivery of the goods to Hong Lian Trading Co. Ltd. the plaintiffs were entitled to immediate possession. In support of his argument he cited the case of the *Marquess of Bute* v. *Barclays Bank Ltd.* (2). That case concerned certain documents called warrants, which if presented through a bank within a stated period, enabled the payee to receive payment of certain sums of money. It

is to be observed that these warrants did not have an important attribute which is possessed by all bills of lading. This attribute is one which enables bills of lading to be transferred by one person to another, conferring upon the transferee a right of property which entitles the transferee to maintain an action for the delivery of the goods specified in the bills of lading or their value. The nature of a warrant being thus essentially different from that of a bill of lading, no assistance can, in my view, be derived from the case of the *Marquess of Bute* v. *Barclays Bank Ltd, supra.*

As to the argument put forward by counsel for the Bank of China to the effect that the plaintiffs are not entitled to sue the defendants because the bills of lading were received by the plaintiffs after the goods had been delivered to Hong Lian Trading Co. Ltd., it is relevant to refer to *Bristol and West of England Bank* v. *Midland Railway Co.* [3] the headnote of which reads as follows:

"In an action for wrongfully depriving the plaintiffs of goods, it appeared that the goods had been consigned to England from a colony. The bills of lading provided that the goods were to be delivered to the order of the consignor or his assigns. The consignor drew bills of exchange on the consignee against the consignment, and sold the bills of exchange, with the bills of lading annexed, which he had indorsed in blank, to a colonial bank, who sent them to a bank in London, with a hypothecation note empowering the London bank to sell the goods if the bills of exchange were not accepted or not paid at maturity. The goods arrived in England, and were delivered to the defendants, who were a railway company, to be delivered to the order of the shipowners. The consignee paid the freight and other shipping charges and accepted the bills of exchange, but before the bills became due, he induced the defendants wrongfully to deliver the goods to him without producing a delivery order from the shipowners. When the bills became due the consignee requested the plaintiffs to advance the money and take up the bills. They did so, and received the bills of exchange and the bills of lading from the London bank, and ultimately obtained delivery orders from the shipowners in exchange for the bills of lading. When they presented the delivery orders to the defendants they found that the goods had been already given up to the consignee, and they thereupon commenced the present action:—

Held, first, that the plaintiffs must be taken to be pledgees of the goods, and had therefore a property sufficient to entitle them to maintain the action independently of the Bills of Lading Act. Secondly, that the plaintiffs' right of action was not affected by the fact that at the date of the wrongful delivery they had not acquired their title to the goods."

Applying the principles laid down in this case, I have reached the conclusion that the plaintiffs' right of action is not affected by the fact that at the date of the wrongful delivery of the goods to Hong Lian Trading Co. Ltd. the bills of lading had not yet been transferred to the plaintiffs. In my opinion, the plaintiffs are entitled to succeed in their claim against the defendants in respect of the goods specified in the two bills of lading. There must be judgment for the plaintiffs for the further sum of $366,219.29 with costs. Judgment having already been given for the plaintiffs for the sum of $779,790.82, the total amount of the damages awarded is $1,146,010.11 with costs against the defendants.

Judgment for the plaintiffs.

Solicitors: *Tan, Rajah & Cheah; M. B. Brash; Laycock & Ong.*

KEW MAN CO. LTD. v. CHEAH YEE ENG & ANOR.

[A.C.J. (Suffian J.) January 19, 1963]

[Alor Star — Civil Appeal No. 4 of 1962]

Landlord and Tenant — Reservation of rent — Whether tenant or licensee — Intention to enter into formal legal relationship — Control of Rent Ordinance, 1956.

The defendant-respondent built a house soon after the Japanese surrender on an estate with the then owner's permission. In the lower court it was found that the house was subject to the Control of Rent Ordinance, 1956 and that the defendant was allowed to occupy the ground on which the house stood rent free because of his service to the estate as a contractor. The plaintiff-appellant's case was that the defendant-respondent is a mere licensee and his licence having been determined the plaintiff was entitled to possession. The learned President rejected the plaintiff's claim on the ground that there was a relationship of landlord and tenant and the tenant was protected by the Control of Rent Ordinance. The plaintiff appealed,

Held: (1) whether or not the parties intended to create as between themselves the relationship of landlord and tenant, under which an estate is created in the tenant and certain mutual obligations arise by implication of law, must in the last resort be a question of intention;

(2) there was no evidence that a tenancy between the original owner of the estate and the defendant could be inferred as at the time the house was built it was to the mutual advantage of both parties that he should be readily available on the estate;

(3) the defendant's licence having been properly terminated the plaintiff was entitled to vacant possession.

Cases referred to:—

(1) *Booker* v. *Palmer* [1942] 2 All E.R. 674.

(2) *Kuppu* v. *Brown & Anor.* [1960] M.L.J. 59.

(3) *Tool Manufacturing Co. Ltd.* v. *Tungsten Electric Co. Ltd.* [1955] 2 All E.R. 657.

(4) *Saraswathy Ammal & Anor.* v. *Oriental Bank of Malaya Ltd.* [1960] M.L.J. 8.

Dadhi Ral Rado v. *Mukat Rai* [1958] M.L.J. 193 was also cited in argument.

CIVIL APPEAL.

Lim Cheng Poh for the appellant.

M. Abraham for the respondents.

Cur. Adv. Vult.

Suffian J.: This is a consolidation of two appeals from the decision of the learned President of the Sessions Court, Sungei Patani, in two separate actions No. 3 and No. 4 of 1961.

In each case the plaintiff is the same, namely the Kew Man Company Ltd.